Supreme Court, U.S.
FILED

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SUPREME COURT OF THE UNITED STATES

October Term, 1995

MARION HOMMERING,

Petitioner,

v.

THE TRAVELERS INSURANCE COMPANY,
a Connecticut corporation,

Respondent,

RIDGEWAY ENTERPRISES, INC.,
a South Dakota corporation,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE UNITED STATES

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QUESTIONS PRESENTED FOR REVIEW

I: The Minnesota Corporate Farming legislation grants a right of first refusal so that a former farmer might repurchase that person's farmland at the same price as a prospective purchaser; and a violation of Minnesota Statutes, Section 500.24, demonstrates a prima facie breach of duty in a negligence per se cause of action.

II: A private attorney general cause of action under Minnesota Statutes, Section 500.24, should exist where the person bringing suit, a member of class protected by the statute, has been harmed by direct violation of the statute.

III: The Due Process rights of Marion Hommerding were violated and she suffered discrimination when the trial court granted summary judgment on the issue of an uncontroverted failure by defendants to give Marion Hommerding the right to rent her former farm property from The Travelers Insurance Company; where defendants failed to submit affidavits or any other documentary evidence to controvert Ms. Hommerding.

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Marion Hommerding respectfully petitions for a writ of certiorari to review a judgment entered by the Minnesota Court of Appeals.

OPINIONS BELOW

This Petition seeks review of the Order of the Minnesota Supreme Court of the State of Minnesota declining review, Marion Hommerding v. The Travelers Insurance Company, a Connecticut Corporation, and Ridgeway Enterprises, Inc., a South Dakota Corporation, Appellate Case No.C6-94-1843, and the unpublished underlying Minnesota Court of Appeals decision, bearing the same case caption and appellate case number. The decisions of the trial court, the Minnesota Court of Appeals, and the Minnesota Supreme Court have been reproduced in the Appendix.

STATEMENT OF JURISDICTION

Petitioner Marion Hommerding seeks review of the decision of the Minnesota Court of Appeals, filed January 10, 1995, and the denial of review of the Minnesota Supreme Court dated and filed March 14, 1995. This Supreme Court of the United States has jurisdiction based on 28 U.S.C., Section 1257.

STATEMENT OF THE CASE

This case came first to the Minnesota Court of Appeals from Stearns County District Court after a successful motion to dismiss and for summary judgment, Hommerding v. The Travelers Insurance Co. et al., District Court File No. CO-94-1843, brought by defendants.

The Minnesota Court of Appeals in an unpublished opinion held that there is no statutory, private remedy under the Minnesota Corporate Agricultural Statute; no negligence per se action under the

same statute; no occasion to act as a private attorney general; and that Marion Hommerding did not raise the issue of failure to offer to rent to her family's former farmland.

STATEMENT OF FACTS

In 1976, Hommerding and The Travelers Insurance Company entered into a mortgage secured by Hommerding's farmstead. Seven years later, Travelers foreclosed on the property and purchased the land by bidding the remaining mortgage debt.

Minnesota Statutes offers the "right of first refusal," permitting a former owner to rent or buy back that person's former land at the same price bid by a prospective purchaser, Minn. Stat., Section 500.24, subd. 6.

The Travelers Insurance Company did not give Marion Hommerding the right of

first refusal to rent the land in 1987.

In 1988, Travelers ostensibly extended Mrs. Hommerding the statutory right of first refusal, but actively interfered with her exercising this right. Ross House, Traveler's agent-broker, refused Hommerding and lenders access to the land for inspection. Fire damage to outbuildings had made inspection imperative. Marion wrote to Travelers complaining of her inability to peruse the land and so complete financing.

Marion Hommerding had reached an agreement with Northern States Power Company to meet the down payment and a sister-in-law had offered to loan the balance so the funds would have been available for the purchase if Hommerding could have obtained access to the property.

Travelers marketed title to Hommerding's land to Ridgeway Enterprises, Inc., a South Dakota corporation. The transfer was illegal on its face since Minnesota law prohibits a foreign corporation from holding more than 1500 acres of farmland, Section 500.24, subd. 2(d) (6).

Other anomalies were apparent: The purchase documents falsely assert Ridgeway Enterprises, Inc., is a Minnesota corporation. Also, this South Dakota entity has two classes of stock, contrary to Minnesota Statutes, Section 500.24, subd. 2(d)(3).

Ridgeway Enterprises, Inc., also failed to file the corporate farm report as required under Minnesota law. Richard Prim, from the Minnesota Department of Agriculture, indicated that Ridgeway had not filed such a report until January 7,

1991, although this entity owned agricultural land in Minnesota since least April, 1988.

REASONS FOR GRANTING THE WRIT

Minnesota Statutes, Section 500.24, indicates that the corporate farming statute serves to protect family farmers:

> Subdivision 1. Purpose. The legislature finds that it is in the interests of the state to encourage and protect the family farm as a basic economic unit, to insure it as the most socially desirable mode of agricultural production, and to enhance and promote the stability and well-being of rural society in Minnesota and the nuclear family.

In the present case, The Travelers Insurance Company had the right to purchase the Hommerding's real property at the foreclosure sale in Stearns County, despite the statutory prohibition against corporate ownership of farmland, Minnesota Statutes, Section 500.24; see

also, Travelers Ins. Co. v. Norwest Bank of Rochester N.A., 706 F.Supp. 695 (D. Minn. 1989). However, this farmland under most circumstances must then be sold within five years or be forfeited. The former farmer has the first right of refusal to repurchase this land.

But one must assume that the prospective sale would be within the law. In this case, Ridgeway could not legitimately purchase Hommerding's former land since this purchase could not be completed within the legal ambit of the corporate agricultural statute.

Ridgeway did not meet these statutory criteria:

> (d) "Authorized farm corporation" means a corporation meeting the following standards:
>
> * * *
>
> (3) it does not have more than one class of shares; and
>
> * * *
>
> (5) shareholders holding 51

> percent or more of the interest in the corporation must be residing on the farm or actively engaging in farming; (6) the authorized farm corporation, directly or indirectly, owns or otherwise has an interest, whether legal, beneficial, or otherwise, in any title to no more than 1,500 acres of real estate used for farming or capable of being used for farming in this state....

Deeds and an affidavit submitted to the trial court show that Ridgeway Enterprises holds in its own name more than 1,500 acres of farmland; there is no evidence that shareholders holding more than 51% reside on the farm or are actively engaged in farming; and the corporation has more than one class of shares. These facts are sufficient to disallow Ridgeway Enterprises from purchasing of Ms. Hommerding's former land.

The sale to Ridgeway was prima facie

invalid; the offer of the right of first refusal given to Hommerding was also invalid. Travelers Ins. Co. v. Horseshoe Lake Farms, Inc., 456 N.W.2d 453 (Minn. Ct. App. 1990), shows that failure to offer a proper right of first refusal may well void such a sale.

In Johnson v. Farmers & Merchants State Bank, 320 N.W.2d 892 (Minn. 1982), the Minnesota Supreme Court held that

> ...a violation of a legislative enactment can be evidence of negligence if (1) the intent of the statute is to protect a class of which plaintiff is a member, but only if (2) the plaintiff's injury involves an invasion of the particular interest protected by the statute, (3) was caused by the particular...form of harm against which the enactment was designed to give protection and (4) it was proximately caused by its violation.

The right of first refusal legislation has as its essential purpose permitting family farmers to buy back

their farmland. Marion Hommerding belongs to this protected class. No person other than family farmers can repurchase their land when another buyer steps forward.

Defendants did not participate in a sale which met the requirements of Minnesota Statutes, Section 500.24, the same statutory section which gives the right of first refusal.

The breach of a statutory rule is often used as a benchmark to prove a breach of the duty included as a requisite element of negligence. In Osborne v. McMasters, 40 Minn. 103, 41 NW 543, 543-44 (1889), the Minnesota Supreme Court related that

> [i]t is now well settled, certainly in this state, that where a statute... imposes upon any person a specific duty for the protection or benefit of others, if he neglects to perform that duty he is liable

> to those for whose protection or benefit it was imposed for any injuries of the character which the statute...was designed to prevent, and which were proximately produced by such neglect.
>
> * * *
>
> Negligence is the breach of a legal duty. It is immaterial whether the duty is one imposed by the rule of common law requiring the exercise of ordinary care not to injure another, or is imposed by a statute designed for the protection of others. In either case the failure to perform the duty constitutes negligence, and renders the party liable for injuries resulting from it. The only difference is that in the one case the measure of the legal duty is to be determined upon common-law principles, while in the other the statute fixes it, so that the violation of the statute constitutes conclusive evidence of negligence, or, in other words negligence per se. ...All that the statute does is to establish a fixed standard by which the fact of negligence may be determined.

The Minnesota Court of Appeals held that Marion Hommerding is not a member of the protected class despite the clear

language of the statute and that negligence per se did not apply. This decision mocks common sense. The right of first refusal has only an indirect benefit to the people of Minnesota as a whole, but the same statute has a direct, singular benefit to Marion Hommerding. It is likely that no one else in this State could have directly benefitted from Marion Hommerding's right of first refusal.

Justice Byron White's dissent in The Florida Star v. B.J.F., 491 U.S. 524, 548 (1989), notes that "[p]ermitting liability under a negligence per se theory does not mean that defendants will be held liable without a showing of negligence, but rather, that the standard of care has been set by the legislature, instead of the courts."

In this case, the Minnesota

legislature has determined actionable conduct, permitting litigation under the right of first refusal legislation, subd. 6, and making the failure to file an annual corporate farm report a gross misdemeanor. Defendant Ridgeway also failed to file this report which would have made critical information available to the public, including Marion Hommerding.

Marion Hommerding has the right to use the violation of the Corporate Agricultural statute, including the right of first refusal legislation by defendants as a breach of the duty owed her by defendants.

The Minnesota Court of Appeals has held in the present case that although the Attorney General has the right to sue under the statute, an individual farmer may not. This holding works to strip an

aggrieved individual of the right to litigate personally for that individual's own rights when the Attorney General does not act. This makes no sense, particularly where the Attorney General has the right to "[enjoin] any prospective or threatened violation [] by an action brought by the attorney general in the manner provided by law," Section 500.24, subd. 5.

The purpose of the Minnesota private attorney general statute is to "eliminate financial barriers to the vindication of a plaintiff's rights * * * and to provide incentive for counsel to act as private attorney general." Liess v. Lindemyer, 354 N.W.2d 556, 558 (Minn.Ct.App.1984) (referencing the Consumer Fraud Statute).

> Subdivision 3a of the "Private Attorney General Statute" then provides an incentive for private parties and their counsel to assist the

> attorney general. It provides that "any person injured by a violation of any of the laws referred to in subdivision 1" may bring a civil action and recover not only damages and taxable costs but costs of investigation and attorney fees (emphasis added).

Here in Hommerding, the applicable statute is Minnesota Statutes, Section 8.31, subd. 1 (1984), which directs that the Attorney General shall "investigate violations of the law of this state respecting unfair, discriminatory and other unlawful practices in business, commerce, or trade, and specifically, but not exclusively * * * " Subdivision 3a, sometimes called the "private attorney general provision," then says, "In addition to the remedies otherwise provided by law, any person injured by a violation of any of the laws referred to in subdivision 1 may bring a civil action and recover damages" plus costs,

investigation expenses and attorney fees. Id., subd. 3a. (Emphasis added,)

If the attorney general has an absolute obligation to enforce this provision, surely an aggrieved farmer whose wants a fair opportunity to repurchase his land has the right to enforce the law as well.

Minnesota Statutes, Section 500.24, has acted as the legal basis for many decisions: Lilyerd v. Carlson, including the most recent decision, 499 N.W.2d 803 (Minn. 1993), where the failure to grant a right of first refusal upended a sale. Crowell v. Delafield Farmers Mutual Fire Insurance Co., 463 N.W.2d 737 (Minn. 1990), points out that the right of first refusal constitutes in itself an insurable interest. See also Kjesbo v. Ricks, 506 N.W.2d 326 (Minn. Ct. App.1993), where the Court of Appeals

remanded to the trial court for a factual determination whether a right of first refusal had been validly exercised.

Finally, Marion Hommerding has been discriminated against in that her constitutional rights to due process have been ignored by the Courts of the State of Minnesota. She has even been unable to obtain a judgment in her favor where the only evidence before the courts was her singular evidence that she had not been given the opportunity to rent her former acreage, again contrary to the right of first refusal laws. Hommerding submitted an affidavit dated June 20, 1994, which verified her original Complaint, pages 20 and 21 to the appendix in the Brief of Appellant Marion Hommerding submitted to the Minnesota Court of Appeals. The Complaint, paragraph 8, states that "The Travelers

Insurance Company failed to provide the Plaintiff Marion Hommerding with her rights of first refusal to lease agricultural real estate for the 1987 crop year, to the detriment and damage of the Plaintiff Marion Hommerding." The Minnesota Court of Appeals thought that the issue had never been raised, but the Court's report is inaccurate.

Travelers and Ridgeway Enterprises' motions had were not supported by affidavits. Marion Hommerding's verified Complaint must be considered as true. Northern States Power Company v. Franklin, 122 N.W.2d 26, 265 Minn. 391 (Minn. 1963).

The facts stated in the Complaint have never been questioned or criticized by Travelers or by Ridgeway Enterprises, Inc. One has to assume, and, indeed the law assumes, that there is no evidence to

support their position.

CONCLUSION

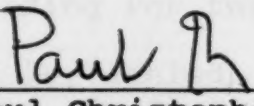
No one at any level of the Minnesota Courts has given Marion Hommerding the justice she asks. Instead, a powerful insurance company and a large agri-business have run roughshod over her rights with the acquiescence of the Courts.

Marion Hommerding asks this United States Supreme Court to come to her aid.

The Writ for Certiorari should issue.

Dated at Minneapolis, this 9th day of June, 1995.

PAUL CHRISTOPHER ENGH, LAWYER



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STATE OF MINNESOTA

IN SUPREME COURT

C6-94-1843

Marion Hommerding,

Appellant,

vs.

The Travelers Insurance Company,
a Connecticut corporation,

Respondent,

Ridgeway Enterprises, Inc.,
a South Dakota corporation,

Respondent.

O R D E R

Based upon all the files, records and proceedings herein,

IT IS HEREBY ORDERED that the petition of Marion Hommerding for further review be, and the same is, denied.

Dated: March 14, 1995

BY THE COURT:

Chief Justice

STATE OF MINNESOTA

IN COURT OF APPEALS

Stearns County
District Court #CO94756 Lansing, Judge

Marion Hommerding,

Appellant,

vs.

The Travelers Insurance
Company, a Connecticut
corporation,

Respondent,

Ridgeway Enterprises, Inc.,
a South Dakota corporation,

Respondent.

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Filed: January 10, 1995
Office of Appellate Courts

Considered and decided by Amundson, Presiding Judge, Lansing, Judge, and Mansur, Judge. *

UNPUBLISHED OPINION

LANSING, Judge

This appeal challenges a district court order of summary judgment denying relief to a family farmer seeking to enforce Minn. Stat. § 500.24. The district court found that there is no private cause of action under Minn. Stat. § 500.24 and that the claims of negligence, fraud, and interference with economic opportunity were insufficiently pleaded. We affirm.

FACTS

In 1984 Travelers Insurance Company foreclosed on farm property held as

security for two loans made to Marion Hommerding. When Ridgeway Enterprises made an offer to buy the land, Travelers gave Hommerding a right of first refusal as required by statute. Hommerding accepted it but later failed to make a payment required by the contract. Hommerding claims that Travelers prohibited her potential mortgagee from inspecting the property and subverted her attempt to finance the sale. She also claims that Travelers withheld Ridgeway's identity as the buyer. Travelers subsequently sold the property to Ridgeway.

Hommerding sued Travelers and Ridgeway, alleging statutory violations, fraud and negligence. The district court granted summary judgment for Travelers and Ridgeway, ruling that Hommerding's complaint failed to sufficiently state a

cause of action for negligence, fraud, or interference with economic opportunity, and that Hommerding lacked standing to enforce Minn. Stat. § 500.24.

D E C I S I O N

I

In her complaint Hommerding asserts a cause of action under Minn. Stat. § 500.24. When there is no underlying common law cause of action, a private cause of action exists only when the legislature explicitly provides for one in the statute's language or clearly implies one. **Bruegger v. Faribault County Sheriff's Dept**, 497 N.W.2d 260, 262 (Minn. 1993); see also **Flour Exchange Building Corp. v. State**, ____ N.W.2d____ (Minn. App. Dec. 6, 1994). Minn. Stat. § 500.24 does not explicitly authorize a private cause of action.

To determine whether to imply a

private cause of action, we consider whether the plaintiff belongs to the class for whose special benefit the statute was enacted, whether the legislature indicated its intent to create or deny a remedy, and whether implying a remedy would be consistent with the underlying purpose of the legislative scheme. **Counties of Blue Earth v. Minnesota Dept. of Labor and Industry**, 489 N.W. 2d 265, 268 (Minn. App. 1992) (citing **Cort v. Ash**, 422 U.S. 66, 78, 95 S. Ct. 2080, 2088 (1975)). The threshold question is whether the plaintiff belongs to the specially protected class. **See Cort**, 422 U.S. at 78, 95 S.Ct. at 2088.

Although family farmers derive some benefit from the statute's protection of family farms, the benefit is indirect. The statute provides that "it is in the

interests of the state" to encourage family farming and to promote the stability of rural society in Minnesota. Minn. Stat. § 500.24, subd. 1 (1992). The benefits to family farmers of restrictions on corporate ownership of farm land serve the state's overall interests. **See Flour Exchange**, ____ N.W.2d ____(owner of historic building derives incidental benefit of statute promoting state use of these buildings); **Blue Earth**, 489 N.W.2d at 268 (counties are indirect beneficiaries of public wage statute because intended to protect public and persons working on public works).

Even if we determined that Hommerding was a member of the class specially protected by the statute, we could not imply a private cause of action because the remaining two factors are not

met. First, there is no indication of a legislative intent to create a private remedy under Minn. Stat. § 500.24. Rather than providing for a private cause of action, the legislature delegated enforcement powers to the attorney general, and penalized violators with divestiture of the property within five years. Minn. Stat. § 500.24, subd. 5 (1992). **See Semrad v. Edina Realty, Inc.**, 493 N.W.2d 528, 532 (Minn. 1992) (finding no implied private cause of action when statute expressly granted enforcement powers to Commissioner of Commerce). Second, creating a private remedy is not consistent with the statute's provisions for protecting the state's interest in family farming, by having the state enforce the statute, rather than individuals. Hommerding also argues that the district court erred by

not using Minn. Stat. § 8.31 to imply a private cause of action under Minn. Stat. § 500.24. Minn. Stat. § 8.31 enumerates specific subjects and statutes under which a private cause of action arises, none of which expressly include Minn. Stat. § 500.24 or the issues it seeks to redress. See Minn. Stat. § 8.31, subds. 1 & 3a (1992). Although Minn. Stat. § 8.31's list of applicable statutes is not exclusive, the supreme court has refused to extend this statute to imply an additional private cause of action. **Monis v. American Family Mut. Ins. Co.**, 386 N.W.2d 233, 236 (Minn. 1986) (reasoning that without clear legislative intent to change the common law, the Unfair Claims Practice Act does not allow a private cause of action).

Because of the plain meaning of both Minn. Stat. § 500.24, subd. 5, and Minn.

Stat. § 8.31, subds. 1 & 3, we decline to create a new statutory cause of action absent an express or implied legislative intent. The district court appropriately granted summary judgment on this claim. **See Holiday Acres No.3 v. Midwest Fed. Savings & Loan Assn**, 308 N.W.2d 471, 480 (Minn. 1981).

Hommerding further argues that Travelers and Ridgeway failed to comply with Minn. Stat. § 500.24, rendering both negligent per se. Even if Hommerding's allegations were accepted as true and the defendants had violated Minn. Stat. § 500.24, they would be negligent only if the violation resulted in the harm the statute sought to prevent. **Thies v. St. Paul's Evangelical Church**, 489 N.W.2d 277, 280 (Minn. App. 1992).

The legislature enacted Minn. Stat. § 500.24 to protect the state's interest

in a stable rural economy by encouraging and protecting family farms. Minn. Stat. § 500.24, subd. 1 (1992). The legislature sought to achieve this goal by restricting opportunities for corporate ownership of agricultural land. Ia. at subd. 3. One means of enforcing this restriction is requiring a redemption period in which rights of first refusal must be offered to the preceding owner. Id. at subd. 6.

It is undisputed that Travelers offered the right of first refusal to Hommerding. The harm for which Hommerding seeks redress is the loss of her farmstead through her inability to exercise her right of first refusal. This is not the harm the statute sought to prevent. The district court correctly held that negligence per se did not result from Hommerding's failure to

exercise her right properly. The district court also correctly ruled that Ridgeway was not negligent per se because the statute's requirement of filing reports did not create a duty between Ridgeway and Hommerding.

III

The record supports the district court's conclusion that Hommerding both insufficiently pleaded and inadequately supported her fraud claim. Hommerding alleged that Travelers and Ridgeway defrauded her by concealing Ridgeway's identity when it offered her the right of first refusal. Ridgeway's argument fails, however, because she neither pleaded nor offered evidence on the remaining nine elements of fraud. **See** Minn.R.Civ.P. 9.02; **Stubblefield v. Gruenberg**, 426 N.W.2d 912, 914 (Minn. App. 1988).

Neither has Hommerding established

the fiduciary relationship required for constructive fraud. **See Perl v. St. Paul Fire & Marine Ins. Co.**, 345 N.W.2d 209, 213 (Minn. 1984). She appears to argue that Ridgeway had an obligation to "disclose certain information," but the statute requires only that Ridgeway file reports with the state. See Minn. Stat. § 500.24, subd. 4 (1992).

In addition, Travelers' allegedly fraudulent conduct of not disclosing the name of the potential buyer is specifically permitted under the statute. See Minn. Stat. § 500.24, subd. 7(b) (1992) ("the seller's discretion, reference to the third party's identity may be deleted from the copy of the purchase agreement").

Finally, Hommerding argues that the district court erred by granting summary judgment to Travelers on the issue of a

purported failure to give her a right to lease the farm property in 1988. The record shows that this issue was not argued before the district court and consequently is not reviewable by this court. See Thayer v. American Fin. Advisors, Inc., 322 N.W.2d 599, 604 (Minn. 1982). Further, Hommerding does not appeal the district court's decision on intentional interference with prospective economic advantage (relative to the right of first refusal to buy the land), which was argued at trial and ruled on by the district court. Even if this issue had been properly raised, the district court's reasons for granting summary judgment are sufficient and supported by the record.

Affirmed.

STATE OF MINNESOTA	**IN DISTRICT COURT**
COUNTY OF STEARNS	**7TH JUDICIAL DISTRICT**
Marion Hommerding, Plaintiff, vs. The Travelers Insurance Company, a Connecticut Corporation, and Ridgeway Enterprises, Inc., a South Dakota Corporation, Defendants.	COURT FILE NO. C0-94-756 **ORDER**

The above-entitled matter came on for hearing before the Honorable Richard T. Jessen, Judge of the District Court, on the 29th day of June, 1994.

Lawrence Crosby appeared on behalf of Plaintiff. Hagerty, Johnson, Albrightson & Beitz, by James A. Beitz, appeared on behalf of Defendant Travelers Insurance Company. Lommen, Nelson, Cole & Stageberg, by James M. Lockhart, appeared on behalf of defendant Ridgeway

Enterprises.

NOW, having duly considered the arguments and memoranda of counsel, the documents and proceedings herein, together with the applicable law, this Court **ORDERS:**

THAT, Defendants' motion to dismiss Plaintiff's Complaint in its entirety pursuant to Minn. R. Civ. P. 12.02(e) and 9.02 is **GRANTED.**

There being no just reason for delay, the court administrator is ordered to enter judgment forthwith for both defendants dismissing the plaintiff's claims together with judgment for such costs and disbursements as may be properly allowed under the law.

THAT, the attached memorandum is made a part of this **ORDER.**

Dated this 26th day of July, 1994.

_____

Richard T. Jessen
Judge of District Court

MEMORANDUM

FACTS

This action arises out of two loans made by Defendant Travelers Ins. Co. ("Travelers") to Plaintiff Hommerding which were secured by certain farm real estate ("the farm"). Upon Hommerding's default, Travelers foreclosed on the farm mortgages. In February 1988, Travelers notified Hommerding of the proposed sale of the property and gave her a right of first refusal pursuant to Minn. Stat. Section 500.24, subd. 6. Hommerding failed to properly exercise that right and the farm was subsequently sold to Defendant Ridgeway Enterprises, Inc. ("Ridgeway").

In her Complaint, Hommerding alleges four counts: 1) intentional interference with prospective economic advantage; 2) void transfer of agricultural real

estate; 3) fraud; and 4) negligence. Defendants now move to dismiss Hommerding's Complaint in its entirety: 1) under Minn.R.Civ.P. 12.02 (failure to state a claim upon which relief can be granted); and 2) under Minn.R.Civ.P. 9.02 for failure to plead fraud with the requisite specificity.

DISCUSSION

A motion to dismiss will be granted only if it appears from the pleadings as a whole that there are no facts which could be introduced to support granting the relief demanded. Northern States Power Co. v. Franklin, 122 N.W.2 26 (Minn. 1963). Defendants move to dismiss pursuant to Minn.R.Civ.P. 12.02 and 9.02. Because matters outside the pleadings were presented to and considered by the trial court, defendants' motion to dismiss must be treated as one for

summary judgment. Shannon Sales Co., Inc. v. Williams, 490 N.W.2d 436, 438 (Minn.Ct.App. 1992); see Minn.R.Civ.P. 12.02. summary judgment is appropriate when "there is no genuine issue as to any material fact and ... either party is entitled to judgment as a matter of law." Shannon Sales, at 438. Where there is a motion for dismissal on Rule 12.02 grounds and it is treated as a summary judgment motion by inclusion of matters outside the pleadings, the motion should be granted if the nonmoving party does not produce specific facts that will establish a genuine issue of material fact. Id; Borom v. St. Paul, 184 N.W.2d 595 (Minn. 1971); see Murphy v. Country House, 240 N.W.2d 507 (Minn. 1976). Further, the non-moving party cannot rely on mere general statements of fact, but rather, must demonstrate that specific

facts exist which create a genuine issue for trial. Shannon Sales, at 438; see Valentine v. Conticommodity SVS, Inc., 344 N.W.2d 405 (Minn. 1984)

COUNT I

Defendants contend that Hommerding's Complaint fails to allege a cause of action for intentional interference with prospective economic advantage. The court agrees. Hommerding fails to allege or present evidence regarding three elements of such a claim: 1) that Travelers had a duty to allow her to inspect the property; 2) that Travelers had knowledge of the economic relationship; and 3) that Travelers intentionally interfered with the relationship. Hommerding only makes general allegations and fails to present specific facts to create a genuine issue of material fact on Count I.

Furthermore, Hommerding submitted an affidavit which contradicts the portion of her Complaint alleging intentional interference, paragraphs 13, 17 and 18. The affidavit states that Marilyn Hilsgen, Hommerding's sister-in-law, agreed to lend her $125,000 to enable Hommerding to exercise her right of first refusal. If Hommerding indeed had the funds available to exercise her right of first refusal, her claim that defendants interfered with her ability to obtain that financing is unpersuasive. Since Hommerding has failed to establish a genuine issue of material fact, summary judgment is appropriate on Count I.

As to Ridgeway, the Complaint fails to allege any cause of action.

COUNT II

Hommerding alleges that Traveler's sale of the farm to Ridgeway is a void

transfer of real estate under Minn.Stat. 500.24. Defendants, however, argue that Hommerding lacks standing to bring a claim under Section 500.24, because that statute only grants the Minnesota Attorney General the powers of enforcement and does not create a private right of action.

> Minn.Stat. S 500.24 provides in pertinent part:
>
> With reason to believe that a corporation... is violating subdivision 3, the attorney general shall commence an action in the district court....

Minn.Stat. S 500.24, Subd. 5. The language of S 500.24 shows that the legislature considered which parties would have powers of enforcement. The legislature expressly granted enforcement powers to the attorney general alone. There is no language indicating that

there was an intent to provide a private right of action under the statute. See Semrad v. Edina Realty, Inc., 493 N.W.2d 528, 532 (Minn. 1992)(court observed that the Real Estate Brokers Act did not provide a private cause of action, because it expressly granted enforcement powers to the commissioner of commerce alone and that, while the legislature was aware of the method by which it could create a private right of action, it opted not to do so).

The language of S 500.24 also shows that the legislature considered and provided a remedy for a violation of the statute. Where the legislative intent clearly shows the consequences of a statute's violation were considered, the failure to provide a private right of action is dispositive. Bruegger v. Faribault County Sheriff's Dept., 486

N.W.2d 463, 466 (Minn.Ct.App. 1992) ("a proper level of judicial restraint militates against declaration of a new form of civil liability not clearly declared by the legislature."); Jeffers v. Convoy Co., 636 F.Supp. 1337, 1341 (D.Minn. 1986). The remedy which Hommerding seeks, i.e. to void the transfer of the farm, is unavailable under the statute. There is no private remedy for a violation of Section 500.24. Indeed, the only consequences of the statute's violation requires the entity illegally possessing the property to divest itself of .that property within five years. Minn.Stat. Section 500.24, subd. 5. Nowhere in the statute is there a provision to treat the transfer as void.

Therefore, summary judgment is again appropriate on Count II, because no

genuine issue of material fact exists as to Hommerding's claim for void transfer of real estate.

COUNT III

Hommerding has alleged that Travelers fraudulently concealed the identity of Ridgeway, the purchaser of the farm. on the other hand, Defendants contend that Hommerding fails to plead her fraud claim with particularity. Minn.R.Civ.P. 9.02.

Hommerding alleges that Travelers failed to disclose the identity of Ridgeway when it offered her a right of first refusal and that she was damaged by this nondisclosure. However, she fails to include the remaining nine elements for a fraud claim, and therefore her Complaint should be dismissed for lack of sufficiency under Rule 9.02. See, Stubblefield v. Gruenberg, 426 N.W.2d 912

(Minn.App. 1988). Similarly, because Hommerding fails to set forth the requisite elements of fraud, no genuine issue of material fact exists on that claim, and summary judgment is appropriate.

More importantly, even if Hommerding had plead a prima facie case of fraud, Minn.Stat. S 500.24, Subd. 7(b) provides defendants with a valid defense. That provision allows the seller to delete a proposed buyer's identity from the copy of the purchase agreement in a notice of right of first refusal. Minn.Stat. S 500.24, Subd. 7(b). Therefore, Hommerding's fraud claim should be dismissed, because Travelers had the right to conceal Ridgeway's identity.

As to Ridgeway, the Complaint fails to allege any cause of action.

COUNT IV

Defendants argue that Hommerding fails to allege the four elements of negligence: 1) duty; 2) breach of duty; 3) injury; and (4) causation. Additionally, Defendants argue that Hommerding's negligence claim fails in substance, because Defendants owe no duty to Hommerding.

Since Section 500.24 provides for no private right of action, Hommerding has no standing to enforce any statutory duties Defendants may owe her. Moreover, Hommerding does not allege any special relationship with Defendants that may create a special duty owed to her. Without the requisite element of duty, there can be no claim for negligence.

Hommerding also asserts that Defendants' violation of Section 500.24 is negligence per se. Violations of statutory duties are negligence per se

when the violation results in the harm sought to be prevented. Thies v. St. Paulls Evangelical Church, 489 N.W.2d 277, 280 (Minn.Ct.App. 1992). The question then becomes whether Hommerding's injuries are the harm against which the statute was designed to protect. See Id. Although 500.24 was enacted to protect small family farmers such as Hommerding, it also provides for a redemption period in which rights of first refusal must be exercised. Minn.Stat. 500.24, Subd. 1, 6. The only duty Travelers owed Hommerding was to offer her a right of first refusal. Minn.Stat. S 500.24, Subd. 6. Since Travelers offered Hommerding this right pursuant to the statute and Hommerding failed to properly exercise it, this cannot be a case of negligence per se. Hommerding's injuries

were caused by her own neglect in failing to exercise her right of first refusal, not Defendants' alleged violation of the statute.

Accordingly, Defendants' motion to dismiss is granted on all four counts of Plaintiff's Complaint.